CLERK'S COPY

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1946

No. 540

NELSON FOSTER AND GEORGE PAYNE,
PETITIONERS,

vs.

THE PEOPLE OF THE STATE OF ILLINOIS

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ILLINOIS

PETITION FOR CERTIORARI FILED SEPTEMBER 26, 1946.

CERTIORARI GRANTED FEBRUARY 3, 1947.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1946

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[fol. 1] [Caption omitted]

[fols. 2-3] **IN SUPREME COURT OF ILLINOIS**

No. 29382

PEOPLE STATE OF ILLINOIS, Defendant in Error,

vs.

NELSON FOSTER and GEORGE PAYNE, alias ELIJAH JEFFERSON, Plaintiffs in Error

Error to Circuit Court, Pulaski County.

ORDER GRANTING LEAVE TO PROCEED IN FORMA PAUPERIS—January 23, 1946

And now on this day the Court having duly considered the motion for leave to sue out a writ of error as a poor person, and being now fully advised in the premises,

Leave is granted to file petition for writ of error as a poor person without the payment of costs. Petitioner is ruled to file record, abstracts and briefs on or before twenty (20) days before the first day of the next term. Leave is also granted to file eight typewritten copies of abstract and brief.

[fol. 4] IN CIRCUIT COURT OF PULASKI COUNTY

INDICTMENT—BURGLARY AND LARCENY—Filed February 22, 1935

No. 29382

STATE OF ILLINOIS,
Pulaski County, ss:

Of the January Term of the Pulaski County Circuit Court, in the year of our Lord One Thousand Nine Hundred and thirty-five.

The Grand Jurors, chosen, selected and sworn in and for the County of Pulaski in the name and by the authority of the People of the State of Illinois, upon their oaths present:

That Nelson Foster, George Payne alias Elijah Jefferson and Alex Thames, late of said County, on the 14th day of February in the year of our Lord One Thousand Nine Hundred and thirty-five at and within the said County of Pulaski and State aforesaid, the dwelling house of J. V. Shaver there situate, willfully, maliciously, forcibly, feloniously and burglariously did break and enter with intent, the goods and chattels of the said J. V. Shaver in said dwelling house then and there being found, feloniously to take, steal and carry away, and Five Dollars ($5.00) lawful money of the United States of America of the goods and chattels of the said J. V. Shaver in said dwelling house then and there being found, did feloniously take, steal and carry away, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the same People of the State of Illinois.

And the Grand Jurors aforesaid, in the name and by the authority aforesaid, upon their oaths aforesaid, do further present that the said Nelson Foster, George Payne alias Elijah Jefferson and Alex Thames, late of said County, on the 14th day of February in the year of our Lord One Thousand Nine Hundred and thirty-five at and within the said County of Pulaski and State aforesaid, the dwelling house of one J. V. Shaver there situate, willfully, maliciously, burglariously, feloniously, and without force, the doors and windows thereof being open, did enter, with intent the goods and chattels of the said J. V. Shaver in said dwelling house then and there being found, feloniously to take, steal and carry away, and Five Dollars lawful money of the United States of America, of the goods and chattels of the said J. V. Shaver in said dwelling house then and there being found, did feloniously take, steal and carry away, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the same People of the State of Illinois.

Joseph O'Sullivan, State's Attorney in and for said County of Pulaski.

[fol. 5] [Endorsed:] No. —. Pulaski County, Circuit Court. January Term, 1935. The People of the State of Illinois vs. Nelson Foster, George Payne alias Elijah Jefferson and Alex Thames. Indictment for Burglary and Larceny. A True Bill. John McNeil, Foreman of the Grand Jury. Witnesses. J. E. Wilson, C. G. McIntire, J.

V. Shaver, Mrs. J. V. Shaver, Nellie Whernberg, Addie Parker, Ralph Wilson, Joe Wallace, Otis Mackins, Hoot Thornton, D. Winchester, Otis Nutt, Ollie Brown, Otis Cherry, Walter Mackins, Mrs. Walter Mackins, Mrs. Lipe, C. A. Bolar. Filed this 22nd day of February 1935. Dorothy Bankson Moore, Clerk.

[fol. 6] IN CIRCUIT COURT OF PULASKI COUNTY

MINUTES FROM THE JUDGES DOCKET IN THE CASE OF

THE PEOPLE OF THE STATE OF ILLINOIS

VS.

NELSON FOSTER, GEORGE PAYNE alias Elijah Jefferson and ALEX THAMES

Burglary and Larceny

Feb. 22, 1935,—The Defendants Nelson Foster and George Payne, alias Elijah Jefferson and Alex Thames, having been furnished with a copy of the Indictment and a list of the Jurors and Peoples Witnesses and are advised of their rights of Trial and of the consequences of an entry of a plea of guilty and being arraigned in open Court for plea to the Indictment says, each for himself That he is guilty of burglary and larceny as charged in the indictment and thereupon the Court advises and admonishes each of said defendants of the consequences of entering such pleas of guilty, and Thereafter each of said defendants still persist in such pleas of guilty, and Thereafter each of said defendants still presist in such pleas of guilty, Whereupon said pleas of guilty are received and entered of record.

The Court finds the ages of said defendants to be as follows, respectively, Nelson Foster 34 years old, George Payne, alias Elijah Jefferson 48 years, Alex Thames, 21 years old.

It is the Judgment and sentence of the Court upon said pleas of guilty that each of said defendants, Nelson Foster, George Payne, alias Elijah Jefferson and Alex Thames, be forthwith committed to The Illinois State Penitentiary and there confined until released in due course of law, said im-

prisonment to be for a period of not less than one year and may extend to life time, and that they pay the cost of this suit.

[fol. 7] IN CIRCUIT COURT OF PULASKI COUNTY

Burglary and Larceny No. 1531

THE PEOPLE OF THE STATE OF ILLINOIS

vs.

NELSON FOSTER, GEORGE PAYNE alias Elijah Jefferson and ALEX THAMES

MITTUMUS

On this 22nd day of February A. D. 1935 come the People of the State of Illinois by Joseph O'Sullivan, State's Attorney. Also come Nelson Foster, George Payne, alias Elijah Jefferson and Alex Thames, defendants herein, into open Court in their own proper person, Defendants and each of them, furnished with a copy of the indictment, list of jurors, and a list of witnesses for the People, and each of said defendants is duly arraigned in open Court. Each defendant informs the Court he desires to enter a plea of guilty to the charge of burglary and larceny as charged in the indictment. The Court instructs said defendants and each of them of their rights and admonishes them to the consequences of their plea, yet they presist in said plea, whereupon the Court receives said plea of guilty, and same entered. The Court finds the age of the defendant Nelson Foster to be thirty-four (34) years; the age of the defendant George Payne, alias Elijah Jefferson, to be forty-eight (48) years, the age of the defendant Alex Thames to be Twenty-one (21) years.

It is therefore the judgment and sentence of this Court, upon said plea of guilty, that the defendants Nelson Foster, George Payne, alias Elijah Jefferson, and Alex Thames, be taken from the bar of this Court to the common jail of Pulaski County and from thence by the Sheriff of said Pulaski County to the Illinois State Penitentiary and be delivered to the Warden or Keeper of said Penitentiary, and said Warden or Keeper is hereby required and com-

manded to take the body of the said Nelson Foster, and the body of the said George Payne, alias Enijah Jefferson, and the body of Alex Thames, and keep them, and each of them in said Penitentiary in safe and secure custody from and after the delivery thereof until discharged by due operation of law, said imprisonment to be not less than one year and may extend to life.

It is further ordered that said defendants pay the cost of this suit.

Feb. 22nd.

[fols. 8-9] Clerk's Certificate to foregoing transcript omitted in printing.

[fols. 10-17] IN THE SUPREME COURT OF ILLINOIS, THE MARCH TERM, A. D. 1946

No. 29382

THE PEOPLE OF THE STATE OF ILLINOIS, Defendant in Error,

vs.

NELSON FOSTER & GEORGE PAYNE alias ELIJAH JEFFERSON, Plaintiff in Error

Error to the Criminal Court of Pulaski County

Hon. H. A. Spann, Trial Judge.

ABSTRACT OF THE RECORD—Filed February 7, 1946

Nelson Foster & George Payne, Pro Se.

* * * * * * *

[fol. 18] ERRORS RELIED UPON FOR REVERSAL AND DISCHARGE

In the prosecution of this writ of error the petitioners allege that:

I

That they did not have counsel to represent and protect their rights. That they were on trial in a state court upon a serious criminal charge and were unable to defend themselves. And that they must be allowed benefit of counsel

every step of the way. (Article II Bill of Rights Paragraph 2 and Paragraph 9. Also the 6th and 14th Amendments of the United States Constitution.)

II

That it is a denial of a fair trial to force them to trial with such expedition as to deprive them of the effective aid and assistance of counsel. (Article II Bill of Rights Paragraph 9 and the 6th and 14th Amendments of the U. S. Constitution.)

III

That the Court did not explain to them the aggravation and mitigation nor did the Court examine witnesses as the Court did possess discretion as to the extent of the punishment but failed according to the law to carry out its duty, therefore the Court erred from its procedure.

IV

The Court exceeded the limit of its jurisdiction, though the original jurisdiction was lawful, yet, when the Court with such expedition, gave them an arraignment, pleas of guilty entered, passing judgment and sending them to the penitentiary in less than ten minutes causes the Court to lose its jurisdiction and the judgment is void.

V

The processes were defective, as the law plainly states that the defendants did not have choice of an attorney, they [fol. 19] did not have reasonable time and full opportunity to prepare their defense and that right is guaranteed them under the Bill of Rights of the Illinois Constitution and the 6th and 14th Amendments of the U. S. Constitution.

VI

Foster and Payne were deprived of life, liberty without due process of law.

VII

Foster and Payne did not have a copy of the accusation, did not have a right to meet the witnesses face to face; nor did they sign any statements or waive their rights at any time, therefore, the Court erred in passing judgment and the judgment is void.

VIII

That the Court erred because the trial was not in accordance with the recognized rules of law and procedure; and to be represented by counsel is not an idle ceremony but a substantial part of the law of the land guaranteed by the Illinois and the U. S. Constitution.

IX

The Court erred when it refused to allow Foster and Payne to ask for information as to what procedure they should take before being sentenced, after the Court had stated that they understood that Foster and Payne was to plead guilty. However, the Court would not advise and did not explain to them and would not allow them to talk, in fact the judge passed sentence and the Sheriff had them on their way to the County jail in less than ten minutes. This is err- on the Court and grounds for reversal and discharge. (Bill of Rights of the Illinois Constitution and the United States Constitution 6th and 14th Amendments expresses in no uncertain terms that this is unlawful and in err-.

[fols. 20-64]

X

Foster and Payne *was* arraigned and before this arraignment the State's Attorney told them that they would receive one year in the penitentiary and then be paroled. That they would not need counsel, that it was up to them to plead guilty, say nothing and that he would see that they were given one year and then released on parole. The State's Attorney must not promise nor must he do anything that is not so stated in the statutes. Neither shall the judge hold a hearing that is not guided by the laws. Foster and Payne have been in the penitentiary for more than ten years for a crime of stealing $5.00 under the charge of burglary and larceny and the facts show that they were denied every right so given them by the Constitution of the United States and the Bill of Rights of the Illinois Constitution. When this is so their judgment is void and they must be discharged.

[fols. 65-66] IN SUPREME COURT OF ILLINOIS

No. 29382

PEOPLE STATE OF ILLINOIS, Defendant in Error,

vs.

NELSON FOSTER and GEORGE PAYNE, alias Elijah Jefferson, Plaintiffs in Error

Error to Circuit Court Pulaski County

ORDER OF SUBMISSION—March 18, 1946

Now on this day come the parties hereto and this being one of the days set apart for the call of the docket under the rules of this Court, and it appearing to the Court that plaintiffs in error hath filed herein a duly certified transcript of the record and proceedings of the Court below, together with printed abstracts thereof, and briefs and arguments of counsel in support of the errors assigned herein, and entered motion to reverse the judgment and remand said cause and for costs, and the said defendant in error having entered motion to affirm said judgment and for costs and procedendo, and said motions being taken under advisement for final hearing, and the Clerk of this Court reporting that said cause is now ready to be taken, and said cause is here submitted for the consideration and judgment of the Court:

Therefore it is ordered by the Court that this cause be and the same is hereby taken under advisement.

[fol. 67] IN SUPREME COURT OF ILLINOIS

Docket No. 29382—Agenda 9—March, 1946

THE PEOPLE OF THE STATE OF ILLINOIS, Defendant in Error,

v.

NELSON FOSTER et al., Plaintiffs in Error

OPINION—Filed May 21, 1946

MR. CHIEF JUSTICE THOMPSON delivered the opinion of the court:

An indictment was returned in the circuit court of Pulaski county at the January term, 1935, against plaintiffs in error, Nelson Foster, and George Payne, *alias* Elijah Jefferson,

and Alex Thames, charging them with the crimes of burglary and larceny. They entered pleas of guilty and were sentenced to imprisonment in the penitentiary for a term of from one year to life.

The record discloses that plaintiffs in error, on February 22, 1935, appeared in open court, were furnished with a copy of the indictment, a list of the jurors and the People's witnesses, and after being advised of their rights to trial and of the consequences of their pleas, they persisted therein and entered pleas of guilty. Plaintiffs in error, Nelson Foster and George Payne, impleaded with Alex Thames, have since been confined in the penitentiary, and, appearing *pro sese*, they bring this cause here on the common-law record.

The errors assigned by which a reversal of the judgment is sought are: (1) That they did not have counsel to represent and protect their rights; (2) that the court did not examine witnesses in aggravation and mitigation of the offense; (3) that the court exceeded the limit of its jurisdiction in passing the judgment and sentencing them to the penitentiary in less than ten minutes; (4) that they did not have reasonable time and full opportunity to prepare their defense; (5) that they were not furnished with a copy of the indictment and did not have a chance to meet the witnesses face to face; (6) that the State's Attorney secured their pleas of guilty by promises of leniency in their sentence; and, (7) that they were denied due process of law.

It is first contended by plaintiffs in error that they did not have counsel appointed to represent and protect their rights. It is not shown by the record that the defendants informed the court or in any way indicated that they desired counsel. We have repeatedly held that the right to be represented by counsel is a personal right which a defendant may waive or claim as he himself may determine. (*People* v. *Fuhs*, 390 Ill. 67.) This contention is without merit.

[fols. 68-69] It is next contended that the court did not examine witnesses in aggravation or mitigation of the offense. Plaintiffs in error did not request the court to hear evidence in aggravation or mitigation of the offense, and, further, as the statute fixes the penalty and there is no discretion upon the pleas of guilty of plaintiffs in error but to impose sentences of from one year to life,

the court was not required to hear evidence in aggravation or mitigation of the offense. *People* v. *Stack*, 391 Ill. 15.

It is further contended the court exceeded the limit of its jurisdiction in entering the judgment and sentencing plaintiffs in error to the penitentiary in less than ten minutes. The record reveals they were advised of their rights and persisted in their pleas and there is nothing therein to indicate there was any abuse of discretion in their being immediately sentenced to the penitentiary on their pleas.

Plaintiffs in error further contend they did not have reasonable time and full opportunity to prepare their defense. Nothing appears in the common-law record to so indicate and we do not have a bill of exceptions.

Plaintiffs in error urge they were not furnished with a copy of the indictment and did not have a chance to meet the witnesses face to face. The record specifically shows they were furnished with a copy of the indictment, and, obviously, their insistence in pleading guilty did not necessitate meeting the witnesses face to face.

Plaintiffs in error further urge that the State's Attorney made promises to them in order to secure their pleas of guilty. No bill of exceptions has been filed in this case and we cannot consider questions of fact arising *de hors* the record. (*People* v. *Johns*, 388 Ill. 212; *People* v. *Lantz*, 387 Ill. 72.) Their contention in this respect cannot be sustained.

It is last urged by plaintiffs in error that they were denied due process of law. Nothing appears in the common-law record to indicate that they did not have the fair trial which the law contemplates. This cause being here on the common-law record, the extent of our inquiry is circumscribed by what that record contains. *People* v. *Conn*, 391 Ill. 190; *People* v. *Street*, 353 Ill. 60.

We have examined the record in this case and the numerous contentions assigned by plaintiffs in error and we do not find any errors warranting a reversal. For the foregoing reasons, the judgment of the circuit court of Pulaski county as to plaintiffs in error, Nelson Foster and George Payne, is affirmed.

Judgment affirmed.

[fols. 70-71] IN SUPREME COURT OF ILLINOIS

No. 29382

PEOPLE STATE OF ILLINOIS, Defendant in Error,

vs.

NELSON FOSTER and GEORGE PAYNE, alias ELIJAH JEFFERSON, Plaintiffs in Error

Error to Circuit Court, Pulaski County, 1531

ORDER OF AFFIRMANCE—May 21, 1946

And now, on this day, this cause having been argued by counsel, and the Court, having diligently examined and inspected as well the record and proceedings aforesaid, as matters and things therein assigned for error, and now, being sufficiently advised of and concerning the premises for that it appears to the Court now here, that neither in the record and proceedings aforesaid, nor in the rendition of the judgment aforesaid, is there anything erroneous, vicious or defective, and in that record there is no error.

Therefore, it is considered by the Court that the judgment of the circuit court of Pulaski County aforesaid, be affirmed in all things and stand in full force and effect, notwithstanding the said matter and things therein assigned for error.

I, Earle Benjamin Searcy, Clerk of the Supreme Court of the State of Illinois and keeper of the records, files and Seal thereof, do hereby certify that the foregoing is a true copy of the final order of the said Supreme Court in the above entitled cause of record in my office.

[fol. 72] IN THE SUPREME COURT OF ILLINOIS, THE SEPTEMBER TERM, A. D. 1946

No. 29382

THE PEOPLE OF THE STATE OF ILLINOIS, Defendant in Error,

vs.

NELSON FOSTER & GEORGE PAYNE alias ELIJAH JEFFERSON, Plaintiffs in Error

Writ of Error to Criminal Court of Pulaski County

Hon. H. A. Spann, Trial Judge.

PETITION FOR REHEARING—Filed June 7, 1946

Nelson Foster, George Payne, Menard, Illinois, Pro Sese.

[fol. 73] May it Please the Court:

Nelson Foster & George Payne, Alias Elijah Jefferson, Plaintiffs in Error, asks this Court for a rehearing, and states that the Court in its opinion overlooked or ignored the Plaintiffs in Error's fundamental right to legal representation in a criminal case, especially in a case where a life sentence was imposed, which is guaranteed to him by section 1 of the Fourteenth Amendment to the Constitution of the United States, and, also the Constitution of the State of Illinois, Bill of Rights, Section II, paragraphs 2 and 9.

Plaintiffs in Error further asks a rehearing because this Court, in its opinion affirmed the said case on May 21st, 1946 by such action by stating that Plaintiffs in Error [fol. 74] waived all his constitutional rights.

This case was brought to the Court solely upon the record of the Common Law and it is apparent that from this certified Common Law there is no mention of the Plaintiffs in Error waiving his rights. The record in fact is barren.

In Hill v. State of Texas, 316 U. S. 400, 406, 62 S. Ct. 1159, 1162, the Supreme Court of the United States said:

> "No state is at liberty to impose upon one charged with crime a discrimination in its trial procedure which the Constitution, and an Act passed pursuant to the Constitution, alike forbid. Nor is this Court at liberty to

grant or withhold the benefits of equal protection, which the Constitution commands for all * * * But it is our duty as well as the State's to see to it that through out the procedure for bringing him to justice he shall enjoy the protection which the Constitution guarantees."

The one point plaintiffs in error wishes to bring out is: It is a settled fact that the record in this case fails to show a compliance not only with the Fourteenth Amendment to the Constitution of the United States, but also with the provisions of the Illinois Constitution guaranteeing every defendant in a criminal case due process of law.

In Johnson v. Zerost, 304 U. S. 457, and also in the case of Glasser v. U. S., 315 U. S. 60, regarding the waiver of constitutional rights and the record showing that such rights were waived, defendant in error states that there "is not any pretense that there was any waiver here of any constitutional rights", and he then proceeds to say that when a person pleads guilty he automatically waives all rights. Therefore the Johnson and Glasser cases show that unless the record shows an intentional waiver of constitutional [fol. 75] rights, it will be presumed that such rights were not waived (and this common law record shows no waiver of any constitutional rights to counsel of Plaintiffs in error).

If the Plaintiffs in error *has* previously had their day in the trial court. If a trial Court can legally through its procedure bring before the bar a person, charged with burglary and larceny and without showing in the record if the person wants counsel, without asking them to sign a waiver and pass sentence on that person without any further ado according to the laws of the Illinois Constitution and the United States Constitution, Amendment 14, then there is no recourse for plaintiffs in error.

This Court, if they will look at the indictment in this case they will see that the Judge of the trial court could have sentenced them on any part of the indictment, that is on any one of the counts and still be within the law. It must be noted that the second count and charge of larceny could have been not less than one year nor more than ten years as prescribed by the statutes. That, and that was the reason why the plaintiffs in error were willing to plead guilty. But at that, the Court should have the plaintiffs in error sign waivers on their constitutional rights. Not just say

that because the record is barren of any mention of their constitutional rights they have automatically waived each and every one of their rights.

There is no use to citing numerous cases where criminals have had their cases reversed on the very grounds the plaintiffs now brings to this Honorable Court's attention, but referring to: Duties of State's Attorneys-Smith Hurd Ill. R. S., Chapter 14, Sec. 5. States Attorneys are representative of all people including the defendant, and his official oath requires him to safeguard constitutional rights [fol. 76] of defendant in criminal cases as those of any other citizen. (People v. Sweetin, 325, Ill. 245.)

If from this law, it must be assumed that the State Attorney did not protect the plaintiffs in error. It is an evident that this is reversible error.

From the foregoing it is to be observed that it is extremely doubtful whether the defendants, now plaintiffs enjoyed due process of law under the Illinois Constitution. The question also is raised as to due process of law under the const-ution of the United States. The decisions of the Supreme Court of the United States go further in rendering effective a defendant's rights, under circumstances as disclosed here, than do those of Illinois. No State has a right to regulate the procedure its takes that is contrary to the State's own constitution and the United States Constitution. Under Federal decisions it is held that there is a presumption against waiver of constitutional rights, and that an intentional waiver of constitutional rights should properly appear of record.

In summing up, when an indictment for a criminal offense that has a life sentence is returned on a certain day, the defendants called, before the court, a hearing that last probably ten or fifteen minutes and they are then on their way to the penitentiary for life without signing any waivers, without having counsel, without being advised by the States Attorney, as well as the Court what they could do, comes within the points that the 14th Amendment of the United States Constitution which involves that person's constitutional rights. So the conclusion is that this Honorable Court has overlooked plaintiffs in error rights and that the record being barren in this case fails to show that plaintiffs in error *has* waive- their constitutional rights as set forth in the fourteenth amendment to the constitu- [fol. 77] tion of the United States, but also with the pro-

vision of the Illinois constitution guaranteeing every defendant in a criminal case due process of law.

For the reasons above given it is respectfully submitted that the petition for rehearing should be allowed, and on a rehearing the opinion of May 21, 1946 be reversed and plaintiffs in error remanded back to Pulaski Circuit Court.

Respectfully submitted, (S.) Nelson Foster, George Payne, Menard, Illinois, Pro Sese—.

[fol. 78] IN SUPREME COURT OF ILLINOIS

No. 29382

PEOPLE STATE OF ILLINOIS, Defendant in Error,

vs.

NELSON FOSTER and GEORGE PAYNE, alias Elijah Jefferson, Plaintiffs in Error

Error to Circuit Court, Pulaski County

ORDER DENYING REHEARING—September 12, 1946

And now on this day the Court having duly considered the petition for rehearing herein and being now fully advised of and concerning the premises, doth overrule the prayer of the petition and denies a rehearing.

[fol. 79] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 80] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1946

No. 540

ORDER GRANTING MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS—February 3, 1947

On Consideration of the motion for leave to proceed *in forma pauperis* in this case.

It Is Ordered by this Court that the said motion be, and the same is hereby, granted.

[fol. 81] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1946

No. 540

ORDER ALLOWING CERTIORARI—Filed February 3, 1947

The petition herein for a writ of certiorari to the Supreme Court of the State of Illinois is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Endorsed on Cover: Enter petitioners pro se. In forma pauperis. File No. 51,404 Illinois, Supreme Court. Term No. 540. Nelson Foster and George Payne, Petitioners, vs. The People of the State of Illinois. Petition for a writ of certiorari and exhibit thereto. Filed September 26, 1946. Term No. 540, O. T. 1946.